

Chief Judge Marsha J. Pechman

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,)	NO. CR06-157MJP
)	
Plaintiff,)	NOTICE OF INTENT TO
)	OFFER FRE 404(b) EVIDENCE
v.)	
)	
HENRY ROSENAU,)	
)	
Defendant.)	

The United States of America, by and through Jenny A. Durkan, United States Attorney for the Western District of Washington, and Susan M. Roe and Marc Perez, Assistant United States Attorneys for said District, hereby files this Notice of Intent to Offer Evidence of other crimes, wrongs and acts at trial and that such evidence will be offered both as inextricably intertwined and to prove motive, opportunity, intent, preparation, plan, knowledge identity and absence of mistake or accident, pursuant to the Federal Rules of Evidence, Rule 404(b). The evidence, which is part of the conspiracy's common scheme and plan, arises from the defendant's actions assisting in border helicopter smuggling.

Mr. Rosenau met with another pilot in the summer of 2004, during and as part of the conspiracy, and flew the other pilot from Canada into the United States to a remote landing area, in or near the United States National Park. The entry into the United States was made illegally and was not accurately reported or filed.

1 The purpose of Mr. Rosenau's actions and crimes was to bring the second pilot into
2 the United States so that the second pilot could take delivery of another helicopter. The
3 purpose of obtaining the second helicopter was so that it, too, could be flown across the
4 international border, smuggling marijuana, people and other contraband as part of the
5 common scheme and plan.

6 Upon arrival in the United States by Mr. Rosenau, the second pilot was met by one of
7 Mr. Rosenau's "offloaders." That is, a Canadian man illegally staying in the United States
8 that summer who was employed off-loading deliveries of marijuana from Mr. Rosenau and
9 his coconspiring pilots after the loads were flown across the border. This particular off-
10 loader, Brian Fews, for instance, accepted a nearly 500 pound marijuana load in Okanagan
11 County, on June 16, 2005, from the smuggling helicopter pilots.

12 To assist the conspiracy and as part of common scheme and plan, Mr. Fews drove the
13 pilot several hours to the new helicopter, stopping to buy "jerry cans" and Jet A fuel. The
14 second pilot flew the helicopter into Canada to a field near Hope, British Columbia. Within
15 several days, the pilot flew the new helicopter across the border into the United States with a
16 smuggled load of marijuana. The second pilot was paid for his actions.

17 Many of the acts would be better classified not as "404(b) other crimes" evidence but
18 rather as being "inextricably intertwined" with the charged conduct. *See United States v.*
19 *Santiago*, 46 F.3d 885, 889 (9th Cir. 1995) ("Evidence is not considered to relate to 'other
20 crimes' if it is 'inextricably intertwined' with, and 'part of the same transaction' as, the crime
21 for which the defendant was charged") (citing *United States v. Mundi*, 892 F.2d 817, 820 (9th
22 Cir. 1989), *cert. denied*, 498 U.S. 1119 (1991)); *United States v. Easter*, 66 F.3d 1018, 1021-
23 22 (9th Cir. 1995) (quoting *Santiago*). The government's position is that all of the above acts
24 are "inextricably intertwined" with charged crimes in this case. Nevertheless, should this

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1 Court find that these acts are not inextricably intertwined with the charged conduct, the
2 government submits that these actions are also admissible pursuant to FRE 404(b).

3 DATED this 6th day of October, 2011.

4 Respectfully submitted,

5 JENNY A. DURKAN
6 United States Attorney

7
8 *s/Susan M. Roe*

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CERTIFICATE OF SERVICE

I hereby certify that on October 5, 2011, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the attorney(s) of record for the defendant(s). I hereby certify that I have served the attorney(s) of record for the defendant(s) that are non CM/ECF participants via telefax.

s/ Lissette Duran-Leutz

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